



WILD RIVER ADVENTURES

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HB 1 SENATE JUDICIARY

EXHIBIT NO. 4

DATE 3/11/09

FILE NO. HB 150

Good morning Chairman Perry and Members of the Committee:

My name is Bob Jordan and I am a licensed Montana Outfitter and Certified Recreation Therapist. Since 1975 I have provided outdoor recreation services to Montana citizens and visitors. Activities have included whitewater rafting, fly fishing, youth sports, adaptive ski programs, and Special Olympics. Currently I own and operate a whitewater rafting company in West Glacier.

I am here today to lend my support to the Montana Recreation Responsibility Act, because I believe that if HB 150 becomes law, it would go a long way in leveling the playing field for those of us in the recreation and tourism industry.

As has been mentioned, Montana is one of just three States that does not recognize release and waiver language. Montana's biggest competitors in the whitewater industry are the outfitters in Jackson Hole Wyoming. Wyoming not only recognizes exculpatory language, but also has a Recreation Safety Act similar to this bill. We are asking today that you as legislators extend the level of protection to our businesses which is enjoyed by our competitors in neighboring States.

For as long as I have been in business, and I have never seen such a hard market for commercial recreation insurance as there is presently. I realize that there are many factors which enter into this, but my concern is that if this legislation is not passed, our State will be considered an unfavorable market to do business in by the insurance industry. In today's economy where some insurance companies are teetering on the brink of extinction, it is a distinct possibility that if we don't get our act together soon, underwriters will begin to pull out of the State all together. If I cannot buy or afford insurance, the Board of Outfitters and Forest Service will not allow me to operate, even if I was foolish enough to do so. Thus I would have to close my doors for good.

As an outdoor recreation enthusiast, I have climbed some of Montana's highest peaks, skied in places I had no business being in, come face to face with grizzlies and mountain lions, and run some of the wildest rivers on the planet. But I can honestly say that as nervous as I have been in these situations, they pale in comparison with the underlying fear, paranoia, and the knot in my stomach that occurs any time we have even a minor accident in the course of our operations.

Twenty years ago, if someone fell out of a raft and went for a swim, it was considered to be a routine part of the experience, and sometimes even the highlight of the trip. Today, any accident, no matter how minor, has the potential to result in litigation. As such, we are required by our permitting agencies and our insurance company to write up complete incident reports on any event out of the ordinary, as well as gather witness statements from all parties involved. Then hold our breath for 3 years until the statute of limitation expires.

Here is an example that occurred recently: A young man fell out of one of our rafts while riding through a rapid. His mother-in-law extended her paddle in an attempt to get him back in the boat. She inadvertently hit him in the mouth with her paddle and chipped

one of his teeth. Two months later I was contacted by his lawyer and asked to pay his dental bill of \$2000.00. I was advised by my insurance agent to pay the bill or risk getting higher premiums down the road.

Seven years ago we had a much more serious and tragic accident occur on one of our trips. A raft tipped over while going through a rapid. While not routine, this is an inherent risk of the sport; we inform our guests about the possibility and tell them what to do if it occurs. Our guides were able to get everyone back on board within minutes. But when a 55 year old gentleman was pulled into the boat, he went into cardiac arrest. Despite heroic efforts on the part of the guides, who gave immediate CPR and were able to get him to a rescue helicopter within 20 minutes of the incident, the individual died en-route to the hospital. The State Medical Examiner later determined that the victim had a pre-existing occluded left coronary artery, and was, in his words, a "ticking time bomb ". Needless to say, this was a devastating event for all involved.

Three years later we were sued by the family. They claimed that their guide was not adequately trained, (he had over 4 years of experience, taught river rescue workshops, and was a licensed EMT); that our company essentially did not know what we were doing (we had been in business 17 years and had never had a serious accident or claim); and that I was personally to blame for this gentleman's death. Their expert witness compared me to the owner of the Titanic, who believed that just because we never had had a serious accident we were not prepared when one occurred. Furthermore, he predicted someone; most likely a child, would die again while on one of our trips.

After a year of intense preparation, which included gathering and reviewing of records, responding to claims and counterclaims, being deposed, spending countless hours preparing for trial and many sleepless nights, the lawsuit was eventually settled out of court by the insurance company. I must say that during this process I had to do a lot of soul searching and gave serious consideration to getting out of the profession all together- not because I believed we did anything wrong-but because I did not know if I could continue to operate in the litigious climate our business is subjected to in this day and age.

I chose to stay because I believe that the services we provide have helped countless Montana citizens and visitors enjoy our great outdoors. We will continue to do everything we can to minimize the inherent risk of the activities we provide, but of course, we cannot eliminate them nor would we want to. Our customers are seeking adventure, not amusement rides on tracks. I prefer to make a living in Montana's backcountry, not Disneyland.

Let me emphasize that we are not asking for, nor would this bill provide protection from negligent behavior. If we screw up we deserve to be subjected to a lawsuit. But if the injury damage or death is a result of the inherent risk of the activity, then we are simply asking that this question be considered by a Judge when a claim is brought forward.

Montana's Constitution guarantees certain inalienable rights including the "right to enjoy our lives" and the right to "seek health and happiness in all lawful ways". That is what we in the recreation industry help our citizens and visitors achieve. This bill will go a long way to insure that qualified and experienced professionals can continue to provide these services in the future.

Thank you for your consideration of my comments.

Bob Jordan